



2016 Year in Review

IMPACT REPORT

Michigan Indigent Defense
Commission

We are fixing Michigan's Broken System

The Michigan Indigent Defense Commission (MIDC) moved forward significantly in our second full year of work. We submitted standards to the Michigan Supreme Court, released a *Snapshot* of Indigent Defense Representation in Michigan's Adult Criminal Courts, expanded the operational staff and regional team, and secured funding to ensure that the Commission has the necessary resources available to start the process of improving indigent defense delivery statewide.

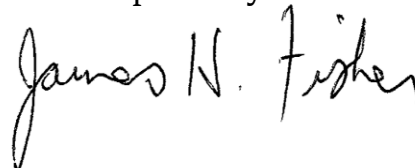
This Impact Report details the progress we have made so far. This past year marked a period of important transition, including necessary amendments to our enabling legislation. The revisions were done in response to the Michigan Supreme Court's conditional approval of the first standards for indigent defense delivery systems during the reporting period. The amendments create a stronger Commission that is already looking ahead with great anticipation towards implementing the standards we developed in our first year.

Expectations for greater system reform are well founded. This report details changes that have been undertaken already, ahead of compliance requirements. Local systems have responded to our developing standards with improvements ranging from assembling a team of stakeholders to talk about necessary changes, to large scale transformations – including opening public defender offices.

This Commission has a solid plan for implementing reform. We are proud to report that Michigan is continuing to seize on a tremendous opportunity to be a nationwide model for delivering the highest quality of representation to indigent defendants.

This *Impact Report* is presented pursuant to the requirements of MCL §780.989(h) and §780.999, and is available on our website at <http://michiganidc.gov/policies-and-reports/>.

Respectfully Submitted,

A handwritten signature in black ink that reads "James H. Fisher". The signature is written in a cursive, flowing style.

Hon. James H. Fisher (Retired)
Chair

Michigan Indigent Defense Commission

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The Commission

The Michigan Indigent Defense Commission (MIDC) develops and oversees the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that criminal defense services are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the Michigan constitution of 1963, and with the MIDC Act.

Commissioners

Hon. James Fisher (Retired), Chair, Hastings

*Represents the Michigan Judges Association
(Term Expires 4-1-18)*

Richard Lindsey, Marshall

Represents the Speaker of the House of Representatives (Term Expires 4-1-17)

Tom McMillin, Rochester Hills

Represents the Speaker of the House of Representatives (Term Expires 4-1-17)

Shela Motley, Okemos

Represents the Senate Majority Leader (Term Expires 4-1-17)

Michael Puerner, Ada

Represents the Senate Majority Leader (Term Expires 4-1-17)

Hon. Thomas Boyd, Okemos

Represents the Michigan District Judges Association (Term Expires 4-1-18)

Nancy J. Diehl, Detroit

Represents the State Bar of Michigan (Term Expires 4-1-18)

Gary Walker, Marquette

Represents the Prosecuting Attorneys Association of Michigan (Term Expires 4-1-18)

The MIDC Act is found at MCL §780.981 *et. seq.* The Governor makes appointments to the 15-member Commission pursuant to MCL §780.987, and began doing so in 2014. The Commission is composed of all stakeholders in the criminal justice system, including defense attorneys, judges, prosecutors, lawmakers, the state bar, minority groups, local units of government and the general public.

In 2016, Governor Snyder appointed Derek King to fill a vacancy on the Commission. Mr. King is a business owner in Battle Creek, and the county board chairman for Calhoun County.

The Michigan Supreme Court Chief Justice designated Thomas P. Clement as a member of the MIDC in an ex

officio capacity in 2016. Mr. Clement serves the Court as General Counsel, providing legal advice to the Supreme Court, the Court of Appeals, and the State Court Administrative Office. He also serves as liaison to the executive and legislative branches, representing the court on both policy and legislative issues.

Information about all of the Commissioners, including their assignments to standing committees, is available on the MIDC's website.

Meetings

The MIDC held six business meetings in 2016 that were open to, and attended by, the public. All public meetings are conducted in the MIDC's Lansing office, located in the Capitol National Bank Building at the corner of Ottawa Street and North Washington Square. Minutes from the Commission meetings are available on the MIDC's website.

Standing committees meet informally on regular occasion to draft and develop materials referred to the whole Commission. The material refined through committee work forms the basis of the work authorized by, approved of and produced by the Commission. The Commission as a whole sets the policy and process for indigent defense reform.

Commissioners

Kevin Oeffner, Howell

Represents the Chief Justice of the Michigan Supreme Court (Term Expires 4-1-19)

Derek King

Represents local units of government (Term Expires 4-1-19)

H. David Schuringa, Grandville

Represents the general public (Term Expires 4-1-19)

Frank Eaman, Huntington Woods

Represents the Criminal Defense Attorneys of Michigan (Term Expires 4-1-20)

Brandy Robinson, Detroit

Represents those whose primary mission or purpose is to advocate for minority interests (Term Expires 4-1-20)

William Swor, Grosse Pointe Woods

Represents the Criminal Defense Attorneys of Michigan (Term Expires 4-1-20)

John Shea, Ann Arbor

Represents the Criminal Defense Attorneys of Michigan (Term Expires 4-1-20)

Thomas P. Clement, East Lansing

Supreme Court Chief Justice Designee, ex officio member

The **standing committees** are described in the Commission's bylaws. The **Executive Committee** consists of the Chair, the Vice Chair, and the Secretary of the Commission. This committee meets informally every other month with the Executive Director. Additional committees defined in the bylaws are responsible for overseeing the development of **Performance Standards, Indigence & Compensation Standards, Training and Evaluation Standards, and Selection Standards**. These committees meet informally together with assigned staff. Ad Hoc Committees are occasionally established to perform specific tasks.

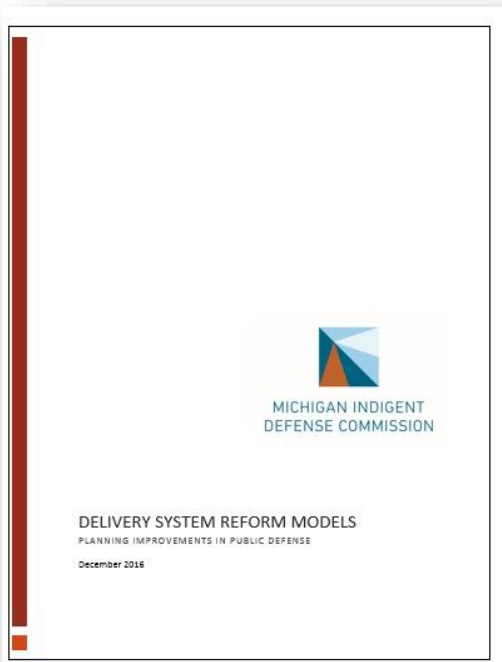
Publications, Policies and Procedures

During regularly scheduled open meetings, the Commission adopts policies and procedures consistent with the mission of indigent defense reform. As a new Commission, the MIDC is establishing a strong foundation to rebuild Michigan's broken system.

The MIDC is often contacted by systems interested in improving their models for delivering indigent defense – for example, by setting up a public defender office. The MIDC is pleased to offer a guide for

consultation describing a variety of delivery system models, with a blueprint for evaluating the feasibility of implementing a new method of providing indigent defense to poor people charged with crimes. The publication is called ***Delivery System Reform Models: Planning Improvements in Public Defense (December 2016)***. This resource is available to download:

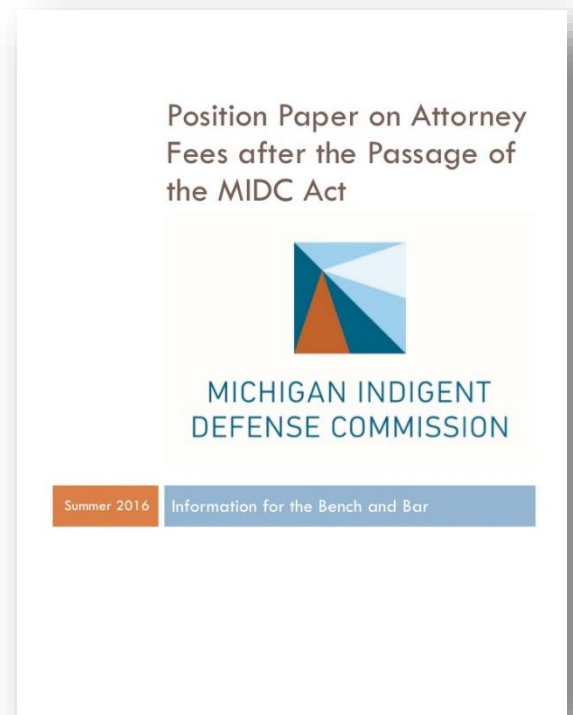
<http://bit.ly/midcguide>



The Commission also responded to requests for resources to be provided to appointed counsel, and published a ***Position Paper on Attorney Fees after the Passage of the MIDC Act (Summer 2016)***. The MIDC takes the position that local systems must award reasonable fees in all assigned cases, to be paid by the relevant funding unit. Attorneys are encouraged to read the position paper when requesting reasonable fees in assigned cases, while trial court administrators and judges may use the document as a resource for evaluating these requests. The position paper is available to download from the MIDC's website.

This resource is available to download:

<http://bit.ly/feespaper>



All MIDC Publications are on our website under the **resources** tab.

The MIDC's **Recommendations & Complaints** committee approved a form for submitting complaints to the MIDC pursuant to MCL 780.989(1)(e). All criminal justice stakeholders including indigent clients and members of the public may submit a complaint or recommendation to the Commission. The form approved by the MIDC is a simple, process-based approach to problem solving for the Commission. Complaints received are forwarded to the committee and

formally responded to with steps outlined for further action by the Commission as needed. The **complaint form** is available in multiple locations on the MIDC's website, and a **quick response code** is printed on the back of new business cards for staff to promote access to this process.



Complaint form: <http://bit.ly/2fmZ6yx>

The MIDC also approved a **Court Rule Comment Policy** in the reporting year, specifically authorizing the Commission to propose adoption of, or comment on, court rule proposals connected to the mandate of the MIDC Act. This includes current and future proposed minimum standards for indigent defense.

Our Staff and Regional Team

Jonathan Sacks is the **Executive Director** of the MIDC, hired by the Commission in 2014 pursuant to MCL 780.989(1)(c). Mr. Sacks reports directly to the 15 Commissioners. The core management team was hired by Mr. Sacks in 2015:

Marcela Westrate is the **State Office Administrator and Legislative Director**. Ms. Westrate began working for the MIDC along with Mr. Sacks in February of 2015. Her primary responsibilities include coordinating efforts at reform with legislators and interested policymakers and obtaining and overseeing the MIDC's appropriations and spending. In addition to policy work, Ms. Westrate also manages office operations.

Marla McCowan is the *Director of Training, Outreach and Support*. Mrs. McCowan started working for the MIDC at the beginning of April, 2015. During the reporting year, she was primarily responsible for managing the regional team, working statewide to educate stakeholders about the work of the Commission and all aspects of outreach efforts critical to reform.

Jonah Siegel is the *Research Director*. Dr. Siegel began working for the MIDC in September of 2015. Dr. Siegel is responsible for identifying institutional research priorities, overseeing data collection and analysis, and translating research findings into best practices. Data collection is mandatory pursuant to the MIDC Act.

Staff Expansion in Reporting Year

During the reporting year, the staff grew considerably and by the end of 2016 the Executive Director had a full-time staff of 10 people to support the work of the Commission.

Christopher Sadler is the MIDC's *Research Associate* and he began working full time in January of 2016. Mr. Sadler previously worked as an analyst with the Michigan Department of Education and has a master's degree in Public Administration. He works with Dr. Siegel, analyzing data and developing recommendations aimed at reform.

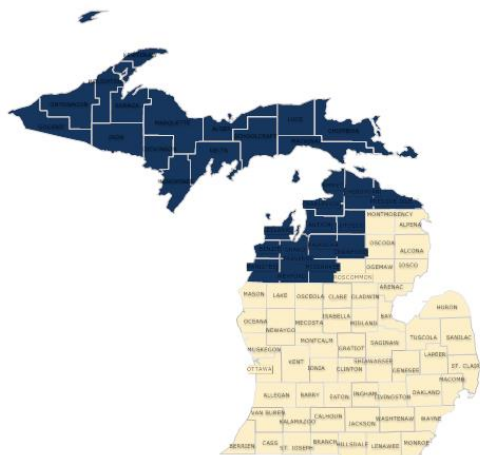
Claire Corsey joined the staff full time in 2016 as a *Policy Associate* after interning with the office and graduating with honors from Michigan State University College of Law in the spring of 2016. Ms. Corsey assists with the drafting and editing of materials prepared for publication by the Commission, and researches matters relevant to indigent defense reform at the state and national levels. Ms. Corsey was sworn in as a member of the State Bar of Michigan in November.

Regional Consultants began working in early January through the end of the fiscal year. The consultants served as the liaisons between local systems and the MIDC. They were initially contracted to work with

criminal justice stakeholders to design the most appropriate plans for meeting minimum standards for indigent defense in a particular county or system. The Regional Consultants covered the following areas:

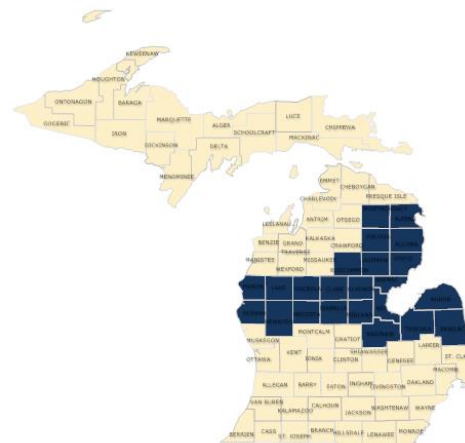
Michael Naughton, *Northern Michigan Region*

Michael Naughton is based in Traverse City, and has experience in both state and federal court at the trial and appellate level. Mike is recognized as a technology expert statewide for criminal cases, and regularly serves as a trainer on technology and complex electronic discovery for attorneys. Mike is a Criminal Defense Attorneys of Michigan (CDAM) Board Member and Vice President of the Utopia Foundation in Traverse City.



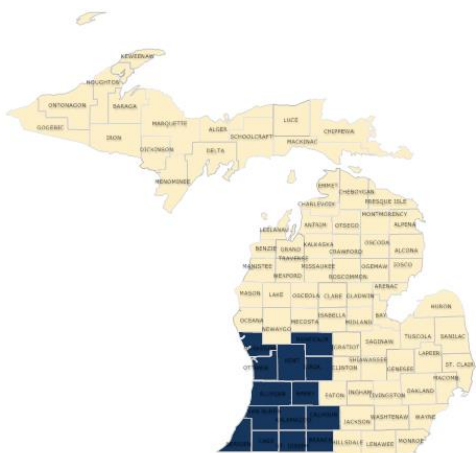
Barbara Klimaszewski, *Mid-Michigan Region*

Barbara Klimaszewski is based in Saginaw, where she has represented indigent defendants for more than 30 years. Barbara began working as an attorney in legal services prior to opening a practice with her partner William T. Street in Saginaw in 1978. Barbara served as a CDAM Board Member for approximately 20 years, she regularly serves as a CDAM Trial College Trainer, and is highly respected by members of the bench and bar for her skills and experience as a criminal defense attorney.



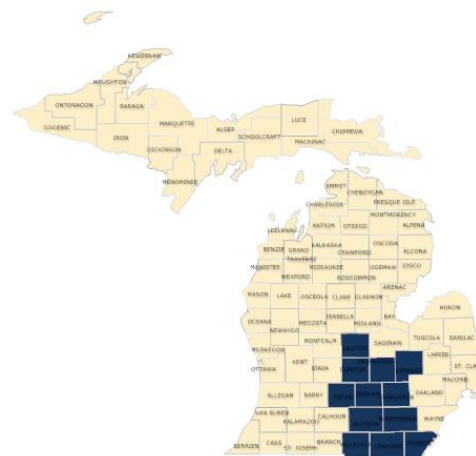
Christopher Dennie, *Western Michigan Region*

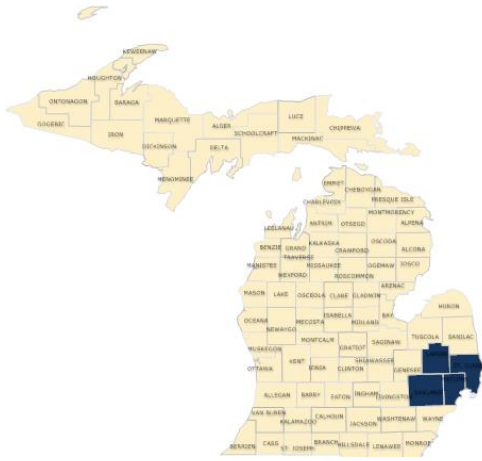
Christopher Dennie is based in Grand Rapids, and most recently served as a public defender with the Kent County Office of the Defender for fourteen years, working on every type of criminal case from misdemeanors to murder trials. Chris was part of a team of attorneys assigned to a grant project at the 63rd District Court that concluded this fall, which provided for counsel to accused defendants at their first appearance before a magistrate or judge. Chris brings extensive experience in indigent defense to the MIDC.



Ashley Carter, *South Central Michigan Region*

Prior to her work with the MIDC, Ashley Carter served as a Staff Attorney at the Legal Aid Society in Brooklyn, New York. Ashley grew up in Detroit and is deeply committed to improving indigent defense in Michigan, having taken time to study Detroit's assigned counsel system and to design a training model to improve communication between attorneys and clients at the initial client interview.





Cheryl Carpenter, *Lapeer, Macomb, Oakland and St. Clair Counties Region*

Cheryl Carpenter began her career as a public defender in St. Louis, Missouri, and has been in private practice in southeast Michigan working as a criminal defense attorney for the past fourteen years. Cheryl serves as faculty at the National Trial College, at

CDAM's Trial College, and as an Adjunct Professor of Trial Skills at Cooley Law School. In addition to working on high profile criminal cases, Cheryl has been a statewide leader in efforts to reform Michigan's Sex Offender Registry.

Kelly McDoniel, *Wayne County Region*

Prior to joining the MIDC, Kelly McDoniel worked in Wayne County for several years, serving as the Director of Training through the Wayne County Criminal Defense Bar Association and as a Research Attorney with the State Appellate Defender Office's Criminal Defense Resource Center (SADO/CDRC).

Kelly worked closely with members of the Detroit bar, where the overwhelming majority of cases involve the representation of poor people, to design training and organize resources for attorneys with a wide range of experience levels.

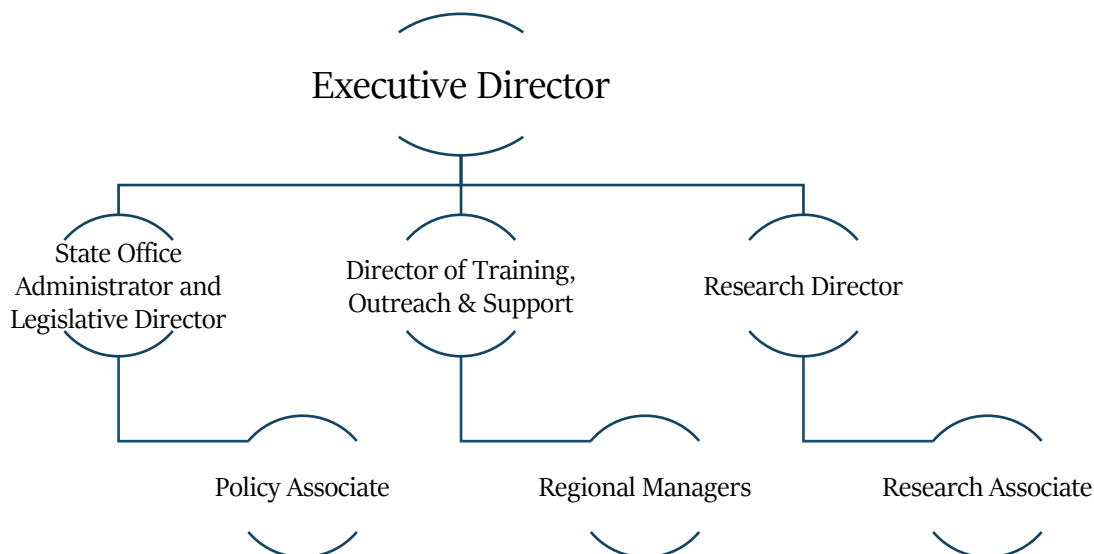


Beginning October 1, 2017, the regional consultants became full time staff members with more specific job requirements as **Regional Managers**. Four full-time managers were in place at the end of

December 2016; a fifth manager was hired in 2016 and scheduled to start January 1, 2017; the sixth Regional Manager position is expected to be filled in early 2017. Additional staff will be hired in 2017 to accomplish the purpose of the MIDC consistent with annual appropriations.

Staff Organizational Chart

By the end of 2016, the organizational staff structure was prepared by the Executive Director pursuant to MCL §780.989(1)(d)(i) as follows:



How We Impact the Community We Serve

The MIDC Act describes a four-part approach to reform Michigan's indigent defense delivery systems: create **minimum standards**, work with systems to design **compliance plans** to meet the standards, **award state funded grants** to systems to fund compliance with the new minimum standards, and collect data for the review of indigent defense services in Michigan and **measure the performance** of systems providing public defense services.

Standards Development

The first four proposed minimum standards for indigent defense delivery systems were **submitted to the Michigan Supreme Court** on January 4, 2016, after development spanning much of the prior year. The standards address education and training, the initial client interview, experts and investigators, and counsel at first appearance in front of a judge or magistrate. These standards represent the beginning of the Commission's efforts to drastically improve the representation for poor people charged with crimes in Michigan.

On January 11, 2016, the Michigan Supreme Court issued an Administrative Order detailing the process for **public comment** on the standards before taking further action. That spring, Commissioners, Staff and the MIDC's Regional Consultants met with practitioners, court administrators and judges in nearly every county. These **meetings** offered a chance to outline the framework for a process, **anticipating the implementation of** the first proposed standards statewide.

The comment period expired on May 1, 2016, and a **public hearing** was conducted on May 18, 2016, in the Supreme Court. At that hearing, the Court heard comments from multiple members of the Commission, the Commission's Executive Director, and several stakeholders in the criminal justice community. More than twenty-five written comments were also submitted for the Court's consideration. The majority of **comments expressed strong support** for the first standards proposed by the Commission.

Conditional Approval of First Standards

The Michigan Supreme Court **conditionally approved** the first set of standards for indigent defense delivery systems in Michigan on June 1, 2016. The Court conditioned approval on legislative revisions to the MIDC Act to address certain constitutional questions implicated by the

statutes. These questions involve the placement of the MIDC within the judicial branch, separation of powers concerns, and the authority to regulate the legal profession. According to the Supreme Court's Administrative Order, the **revisions to the MIDC Act were to take place by the end of the calendar year**. The MIDC immediately began working with the Governor and Supreme Court to develop a solution.

Conditions Met Through Legislative Revisions to the MIDC Act

During the fall of 2016, a series of bills were introduced in the Michigan House of Representatives and the Michigan Senate to amend the Michigan Indigent Defense Commission Act and related statutory provisions. The primary legislative amendments (1) move the MIDC from the Judicial Branch to the Department of Licensing and Regulatory Affairs (LARA); (2) clarify the definition of local systems as trial court funding units; and (3) require LARA to approve proposed minimum standards for indigent defense and specifies that these minimum standards should not infringe on Supreme Court authority.

Detailed descriptions of House Bills 5842-5846 can be found on the [Michigan Legislature's website](#).

A companion bill was introduced in the Senate to amend the Administrative Procedures Act to make clear that the MIDC standards are not part of the APA's rulemaking process.

A detailed description of Senate Bill 1109 is on the [Michigan Legislature's website](#).

The primary bills amending the MIDC Act passed in the House on September 22, 2016, and were unanimously approved by the Senate on December 14, 2016.

Governor Snyder signed this legislation on January 4, 2017: “Ensuring that every Michigander has access to affordable and **competent legal counsel is critical to our public defense system** and our democracy,” Snyder said in a press release. “These bills help us continue to make sure those who have been accused of crimes **receive the fair and capable legal representation they are guaranteed under the Constitution.**”

Submission of First Standards by Commission

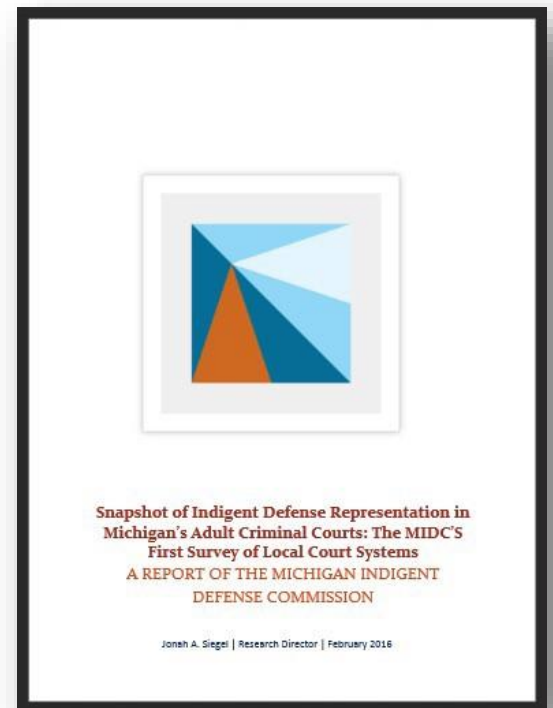
The Commission met for the final, regularly scheduled business meeting of the year on December 20, 2016. During that meeting, the Commission discussed the changes made by the Michigan Supreme Court to the first standards in the Court’s June 1, 2016 Order. Those changes were formally adopted and the Commission **voted to submit those first four standards to LARA** pursuant to the process detailed through the legislative amendments. That submission will occur in February 2017.

Statistical Support for Standards Published

The standards established by the Commission are set forth in the MIDC Act, and the development of those standards is **informed through stakeholder meetings and data collection mandated by the MIDC Act**. In February, the Commission released a report of its first survey to measure the delivery of criminal justice for indigent defense reform in Michigan entitled ***Snapshot of Indigent Defense Representation in Michigan’s Adult Criminal Courts: The MIDC’S First Survey of Local Court Systems*** (Dr. Jonah Siegel, February 2016). With no current statewide standards in place, the survey revealed wide variation in how courts deliver services to indigent defendants.

Key findings include:

- Courts employ loose and **varied guidelines** in determining the eligibility of defendants for appointed counsel services.
- In the majority of courts, defendants whose **requests for counsel have been denied** have no recourse to further pursue assistance.
- There is **inconsistency in attorney compensation** for appointed cases, with hourly rates ranging from \$33 per hour to over \$100 per hour.
- Most appointed counsel **systems do not operate independently from the judiciary**. According to an informal scale, approximately one-quarter of assigned counsel systems can be considered independent, while 15% of contract defender and 40% of public defender office systems operate independently.
- Only 6% of district courts require attorneys to be present at both the bail hearing and at arraignment, despite the **documented importance of legal guidance** in these early stages.
- Sixty-three percent of court systems report the existence of confidential meeting space in both their courthouse and holding facility, though attorneys explain anecdotally that “private” **meeting rooms are often filled to capacity**, difficult to book, or composed of cubicle-type spaces that **do not actually allow for confidential discussions**.
- **Only 15%** of indigent defense systems currently report the existence of local guidelines **requiring participation in Continuing Legal Education courses**.



The *Snapshot* was the subject of media coverage locally, and was discussed in national conversations about indigent defense reform. According to the media, “The survey was released at a time of **renewed interest nationally in how court systems affect poor people and minorities.**” *Survey: Poor don't get adequate defense in Michigan courts*, (Detroit Free Press, March 5, 2016). “These survey results **reinforce the need for uniform public defense** standards in our state,” MIDC Executive Director Jonathan Sacks said in a statement. The report can be downloaded from the **MIDC’s website**.

During the reporting year, the MIDC also completed its **first survey of criminal defense attorneys in Michigan**, designed to gather data about their assigned cases and learn how we can work together to improve indigent defense statewide. Much like the court system survey, the attorney survey sought information about continuing legal education requirements, confidentiality of space for attorney client meetings in courts and jails, using experts and investigators in practice, and recommendations for prioritizing the next standards to be proposed by the MIDC. The MIDC is producing a report summarizing those survey findings, to be published in 2017.

Expectations and Realizations of Greater System Change

The method of reform contemplated by the MIDC Act is through standards implementation. The first standards address education and training of assigned counsel, the initial client interview, experts and investigators, and counsel at first appearance and other critical stages in front of a judge or magistrate. The **standards are required by the MIDC Act**, and they are consistent with the American Bar Association’s Ten Principles of a Public Defense Delivery System.

The first **standards will be submitted to LARA in early 2017**. It is expected that they will be approved and the process for compliance will be implemented during much of the next reporting year. The statute details a **timeline** for systems to submit compliance plans to the MIDC for approval, and many systems have already begun planning for compliance by organizing workgroups and meeting with Regional Managers.

The method of delivering indigent defense will be **defined by individual systems at the local level**. Each county will select its desired indigent defense delivery method, and multiple models ranging from a defender office, an assigned counsel list, contract attorneys, or a mix of systems will be available. The MIDC's responsibility and authority is to work with the counties and courts to ensure compliance with minimum standards, not to select a particular system.

To comply with the standards, local stakeholders will assess the current delivery model and evaluate system satisfaction, identify areas where the system is already compliant or needs improvement, and **plan for standards compliance with goals of system reform in mind**.

Three counties have authorized the **creation of new public defender offices** to deliver services to poor people charged with crimes. Muskegon was the first county to create a public defender office, and opened in January of 2014. **Lenawee County opened a public defender office in January of 2016** and Berrien County is scheduled to open a public defender office that takes a large percentage of indigent adult criminal cases in January of 2017.

Many other systems have already undertaken an evaluation of their delivery systems and have begun **planning for reform**. This planning is either in direct response to a particular standard, or looking forward to future standards that will be established by the Commission.

Standard 1

Education and Training of Defense Counsel

The MIDC Act requires indigent criminal defense systems to employ only defense counsel who have attended continuing legal education relevant to counsels' indigent defense clients. The first standard has

Early Progress

In 2016, four counties (Saginaw, Macomb, Oakland and Berrien) partnered with the MIDC on pilot projects for skills training aimed at new lawyers accepting adult criminal case assignments. The day-long programs focused on client centered representation, interview techniques, ethics, motion practice, preliminary examinations, jury selection and cross examination skills.

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As of September 2016, the Lenawee County public defenders were "ahead of" the MIDC's annual training requirements, according to Deputy Public Defender Dawn VanDusen.

- The Daily Telegram, *Lenawee County Public Defenders Settle Into Their New Offices While Managing Large Caseload* (September 26, 2016)

two components: All attorneys shall annually complete **at least twelve hours of continuing legal education**, and attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one **basic skills acquisition class**.

Mandatory annual training is not required for attorneys in Michigan in order to maintain a license to practice law. But some counties do require a certain amount of hours of continuing legal education in order to accept criminal case assignments. According to the comment on the first standard by the Supreme Court, twelve hours of continuing legal education "represents typical national and some local county requirements, and is accessible in existing programs offered statewide."

Standardizing this requirement and **providing state funding for training** assigned counsel will ensure that all attorneys have access to

the tools they need to render effective assistance of counsel when they represent people who are poor and charged with crimes.

Standard 2

Initial Interview

The MIDC Act includes the principle that defense counsel must be provided sufficient time “and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” The MIDC Act also recognizes the importance of effective representation and of a strong attorney-client relationship. The initial client interview is a crucial step both in beginning to investigate the case, and in laying the groundwork for a positive relationship. The ABA’s 10 Principles for indigent defense delivery systems state that defense counsel “should interview the client as soon as practicable.”

Standard 2 incorporates these concepts: when a client is in local custody, **counsel shall conduct an initial client intake interview within three business days after appointment**; when a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting.

Early Progress

In 2016, Berrien County made significant changes to their indigent defense delivery system, and ultimately recommended that a public defender office replace the purely contract-based method of delivery that had been in place.

In preparation for the changes, Berrien also has **refurbished offices** at 100 Church St. **that are now available for private meetings between attorneys and their clients**, as well as legal research.

- The Herald Palladium, *Commissioners approve Public Defender Office*,
(October 14, 2016)

Standard 3

Investigation and Experts

The United States Supreme Court has held that the effective assistance of counsel includes the duty of counsel to **make reasonable**

Early Progress

The case for reform is stronger than ever, with high profile cases demonstrating inadequate investigations prior to convictions being imposed. Statewide conversations reveal the inequality in seeking and funding expert witnesses in assigned cases. Correction will begin with adequate funding, but independence from the judiciary will lead to greater reform.

“The current state of the law in Michigan forces indigent defendants to choose between funding an expert witness and protecting trial strategy.”

-Jim Kolosowsky, *Funding Expert Witnesses for Indigent Defendants: A Model for Unequal Protection*
(Michigan Bar Journal, May 2016).

investigations in cases, and consult with expert witnesses.

Standard 3 establishes minimum standards for defense investigation and experts, consistent with the MIDC Act and United States Supreme Court precedent.

The standard states that counsel shall **conduct an independent investigation** and when appropriate, counsel **shall request funds to retain an investigator to assist with the client’s defense.** The standard also sets forth that counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the

prosecution’s case. Finally, counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

The **National Registry of Exonerations** shows there have been numerous exonerations of innocent people in Michigan. Nineteen involve inadequate assistance of counsel at trial. Many more shed light on work that should have been done at trial. In at least a dozen, expert witnesses were able to demonstrate innocence after the conviction, and

for twenty-nine different people, proper investigations showed their innocence. Standard 3 will fortify requests by attorneys to have investigators and experts available in assigned cases, ensuring level access to resources statewide.

Standard 4

Counsel at First Appearance and Other Critical Stages

The United States Supreme Court has repeatedly recognized that the **right to counsel is implicated when the defendant's liberty is jeopardized**, which encompasses a criminal defendant's first appearance in court. Despite the documented importance of legal guidance in these early stages, only 6% of Michigan's district courts currently require attorneys to be present at both the bail hearing and at arraignment.

As part of its first set of proposed standards, MIDC Standard 4 addresses counsel at first appearances and other critical stages and **requires counsel be appointed** to provide assistance to the defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge. Standard 4 goes on to require that all persons determined to be eligible for indigent criminal defense services shall also **have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.**

The Michigan District Judges Association supported the standards, and spoke about Standard 4 during the Administrative Hearing in the Supreme Court: **"For the system to really work for all defendants, there should be a lawyer present to tell them about the consequences of a quick guilty plea."** Judge Julie H. Reincke, 56-A

District Court, *Advocates to MSC: the sooner the better*, Michigan Lawyers Weekly (May 30, 2016).

Early Progress

The 73B District Court in Huron County launched a counsel at first appearance pilot project in the summer of 2016. Through collaboration between the Court, the defense bar, the prosecutor's office, and the jail, every defendant arraigned after August 2016 has been represented by counsel at his or her first appearance. The MIDC Research Unit has partnered with local stakeholders in Huron County to evaluate the implementation of the program so that other systems around the state can learn from their experiences. Huron's pilot project has allowed the Research Unit to take a closer look at how the MIDC and court stakeholders can proactively and efficiently harness the full capacity of court case management systems to answer questions about best practices. The MIDC will continue partnering with Huron County in 2017 to learn more about how its model can be translated to other courts in Michigan.

"We believe that having a lawyer here at first appearance ... will result in less court appearances by defendants...."

-Judge David B. Herrington, 73B District Court, *Defendants Will Receive More Assistance in Courtroom*
(The Huron Daily Tribune, August 12, 2016).

Next Standards

Data collection and meetings have fortified the Commission's priorities for upcoming standards to be proposed this year. The next standards will address **financial incentives and disincentives in compensating assigned counsel, caseload capacities, qualification and review of attorneys eligible for assignments, and independence from the judiciary**. Like the first standards, these requirements are derived from the MIDC Act, constitutional principles, or nationally accepted models for delivering public defense services. The MIDC has already begun drafting these next set of

standards and they will be circulated among the Commission later this spring. Systems are encouraged to consider the next standards when designing a plan for compliance.

Measuring Reform

With the release of the first survey of Michigan courts, the MIDC offered a statewide glimpse into the current provision of indigent defense and the potential for change brought about by minimum standards. A number of projects began in 2016 and will continue in 2017. Information gathered will be used to inform standards development and best practices for compliance planning and ongoing data collection efforts.

The MIDC's Regional Managers engaged in a **court watching project** in circuit and district courts throughout the state. The court watchers were tasked with observing proceedings and answering a series of questions about each case related to the presence or waiver of counsel and the frequency of guilty pleas. The court watchers also offered their observations on the more general state of affairs in each court such as the existence of private meeting spaces, communication between judges and defendants, and the assignment of appointed counsel to cases. Court watching will continue to be a critical component of the MIDC's multi-pronged research strategy as minimum standards are implemented and then compliance with standards is evaluated.

In 2016, the MIDC launched a **massive effort to identify and evaluate how attorneys are compensated in every court across the state**. In most instances, this effort centered on obtaining relevant fee schedules or attorney contracts from courts and then synthesizing them in order to quickly answer questions about how courts – individually or in the aggregate – pay attorneys for representing indigent clients. This data collection and assessment will continue into 2017 and will eventually become an annual practice.

The MIDC is finalizing the **development of a web portal** that will act as a data collection tool and resource for stakeholders. Through the portal, the MIDC will collect data from counties, courts, defense attorneys, defendants, and other relevant parties. Specifically, the portal will allow the MIDC to gather and track compliance plans, fee schedules, attorney caseload reports, the completion of CLEs by attorneys, and other pertinent information related to the provision of indigent defense representation. The portal will also allow users to search across other counties and courts in order to facilitate the sharing of information between local systems. The portal will launch in mid-2017.

Impending Progress

Encouraging Best Practices

The MIDC's Research Unit has partnered with courts across the state on three pilot projects, each of which aims to either illuminate current practices or develop best practices for the future.

The first is Huron County's **Counsel at First Appearance** project, detailed above. The MIDC will continue partnering with Huron County in 2017 to learn more about how its model can be translated to other courts in Michigan.

Next, as the MIDC develops and plans for the implementation of the first set of minimum standards, the Research Unit has started working with **local courts to assess how their data collection practices** can be adapted to track new data points related to indigent defense.

Finally, the MIDC secured funding from the U.S Department of Justice to **examine the impact of social worker involvement in the public defense representation of adults facing criminal charges**. The goal of the Social Worker Sentencing Project (SWSP) is

to reduce incarceration rates by lowering prison sentences for specified felony defendants in favor of appropriate community alternatives, and decrease recidivism through the increased use of treatment and educational programs. To accomplish this objective, the MIDC has partnered with the Urban Institute to embed and measure the impact of social workers in two diverse Michigan indigent defense systems. The three-year project will include the development, implementation and evaluation of the social worker program model. This process will be guided by national experts with many decades of experience practicing, implementing, and measuring the effects of social work in indigent defense. As the first effort to bring social workers to trial-level criminal indigent defense in Michigan, the project aims to develop solutions that help improve the provision of indigent defense across the state and more broadly.

Standards Development Strengthened

The MIDC is committed to exploring all avenues for success in indigent defense reform. Three processes were put in place in 2016 to bolster the framework for improvements to the system.

At the Commission meeting on October 18, 2016, Dr. Siegel presented a proof of concept about a **weighted caseload study**, to be conducted by an outside organization. In December, the Commission approved the staff to develop a request for proposals, subject to approval or modification by LARA.

At the December 2016 Commission meeting, the MIDC also authorized staff to develop a process for **discretionary grants** to indigent defense delivery systems in Michigan. The process will be discussed in early 2017 by the MIDC.

The Commission authorized the Chair to obtain **legal advice** for the MIDC, and authorized spending for this purpose outlined in a legal

memorandum of understanding with the Attorney General's Office. Counseling will begin in early 2017.

Obtaining and Maintaining Resources to Ensure Success

Operations and Budget

In the fall of 2016, the Executive Director and State Office Administrator began meeting with the Director of LARA and LARA staff to discuss potential procedural issues associated with the MIDC's move to the executive branch of government. This transition will take place in the fall of 2017, at the beginning of the 2018 fiscal year. The MIDC will remain in the judicial branch of government for the 2017 fiscal year.

The MIDC is required by statute to publish its budget and a listing of all expenditures. **Expenses are listed quarterly on the MIDC website.** Annual budget, salary and related information is detailed here pursuant to MCL §780.999.

The MIDC has a unique statutory provision that allows the agency to carry forward any unspent appropriations for a maximum of four fiscal years. See MCL §780.985(2). Each balance is placed within a specifically defined work project and can only be used to fund activities that fall within that project's definition. The expenditures in FY 2016 represent a combination of our annual appropriations and work project

Expenditures - Fiscal Year 2016 October 1, 2015 - September 30, 2016

Salaries and Wages	474,844.44
Longevity	670.00
Insurances	70,938.22
Retirement and FICA	267,306.42
Contracted Services	618,065.59
Supplies & Materials	51,969.82
Travel	30,557.51
Equipment	12,729.60
Rent	55,976.34
Total	\$1,583,057.94

funds. The MIDC must submit an annual request to retain its work project funding and this request is subject to legislative approval.

The MIDC received \$996,700 in appropriations for fiscal year 2016, which began on October 1, 2015, and ended on September 30, 2016. For FY 2017, the MIDC received a \$1.3 million requested increase to the 2016 appropriation.

Website

The MIDC maintains a website pursuant to MCL §780.989(6) and §780.999, which serves as the main resource to learn about our policies, standards and resources as we carry out the mission of improving indigent defense delivery systems statewide. The website is found at www.michiganidc.gov. On its website, the MIDC posts news and noteworthy issues, information about meetings and upcoming events, and the publications and resources detailed in this report. This

reporting year marked the first full year of our web presence, with the site launching mid-year in 2015.

The top pages viewed on the MIDC website (after the homepage):

- Standards
- About the MIDC
- Policies and Reports

During the reporting year, the website had **13,241 visits**, of which 8,112 were new visitors to the site. More than half of the visits either directly accessed or arrived at the site from Google's search engine, meaning that people looking for information about

the Commission generally know how to find us online.

Periodically, MIDC Staff prepares **outreach messages** designed to inform the public about important Commission activities and events, such as standards submission and changes to the MIDC Act. Messages are distributed to criminal defense attorneys, bar associations, public defender offices, newsletters, and posted on our website. MIDC Staff also maintains a Twitter account, @michiganidc, which nearly quadrupled followers in the reporting year.

Recommendations

We expect compliance plans for the first standards to be due in 2017 based on deadlines set in the MIDC Act. The State of Michigan is required to fund the plans, and we look forward to watching this process succeed.

Pursuant to MCL §780.989(h), the MIDC makes the following recommendation for further legislative action:

- The legislature and State of Michigan shall fully fund any MIDC approved compliance plan for the first set of proposed minimum standards for indigent defense delivery systems, pursuant to the requirements of MCL §780.989(2) and §780.993(6) and (9).

The MIDC will also work with the Michigan Supreme Court on potential revisions to court rules necessitated by the MIDC Act and standards development. The rules identified include:

- **RULE 6.005** RIGHT TO ASSISTANCE OF LAWYER; ADVICE; APPOINTMENT FOR INDIGENTS; WAIVER; JOINT REPRESENTATION; GRAND JURY PROCEEDINGS.
- **RULE 6.610** CRIMINAL PROCEDURE GENERALLY.
- **RULE 8.123** COUNSEL APPOINTMENTS; PROCEDURE AND RECORDS.

Conclusion

The MIDC has a solid plan for implementing reform, and along with this annual Impact Report is developing a **two-year strategic plan** setting forth Commission goals and staff action to achieve those goals. We look forward to improving indigent defense together with all criminal justice stakeholders in the State of Michigan.